

(2022) 12 GUJ CK 0064

In the Gujarat High Court

Case No : R/Special Civil Application No. 24075 Of 2022

Jaydeep Arunkumar Jani

APPELLANT

Vs

Vadodara Municipal Corporation

RESPONDENT

Date of Decision : 07-12-2022

Acts Referred:

Citation : (2022) 12 GUJ CK 0064

Hon'ble Judges : A.S. Supehia, J

Bench : Single Bench

Advocate : Harshadray A Dave

Final Decision : Dismissed

Judgement

A.S. Supehia, J

1. The present writ petition has been filed for the following relief:

"7(ii) This Honourable Court be pleased to issue a writ of mandamus or in the nature of mandamus or any other appropriate writ, order or direction, directing the Respondent to regularize the services of the Petitioner from the date of his initial appointment and further be pleased to give all consequential benefits to the Petitioner including regular pay-scale and allowances;"

Thus, the petitioner is seeking regularization of his service in the respondent-corporation.

2. It is the case of the petitioner that though he has been appointed in the month of October, 2008 on contractual basis, he is not yet regularized in service. The petitioner was appointed as an Account Assistant vide order dated 14.10.2008 on contractual basis for a period of two years. Thereafter, it appears that intermittently, the petitioner's service was extended and lastly, it was extended on 13.06.2022. The petitioner as per the aforesaid order is appointed as an Account Assistant again, on fixed wages of Rs.17,500/- for 11 months.

3. Learned advocate Mr.Dave appearing for the petitioner has submitted that since the petitioner has rendered a long service on contractual basis, the respondent should have regularized his service. It is further submitted that the respondent should have created a post, as the project, in which the petitioner was appointed, is still continued. While placing reliance on the order dated 05.04.2018 passed by the Vadodara Municipal Corporation in case of one Riddhi Nitinkumar Pandya, learned advocate Mr.Dave has submitted that the said employee, though was appointed on contractual basis and thereafter, she was appointed on probation basis, has been regularized in service. The order is ordered to be taken on record.

4. It is well settled principle of law that an employee, who is appointed on contractual basis is governed by the terms and conditions of contract.

5. At this stage, it would be apposite to refer to the observations made by the Apex Court in the case of Vidyavardhaka Sangha & Anor. vs. Y.D. Deshpande & Ors., (2006) 12 S.C.C. 482, has held that the persons, who are appointed on ad hoc or temporary for a fixed period, their appointment comes to an end by the efflux of time. The Apex Court has held thus:

"4.It is now well-settled principle of law that the appointment made on probation/ ad hoc basis for a specific period of time comes to an end by efflux of time and the person holding such post can have no right to continue on the post. In the instant case as noticed above, the respective respondents have accepted the appointment including the terms and conditions stipulated in the appointment orders and joined the posts in question and continued on the said post for some years. The respondents having accepted the terms and conditions stipulated in the appointment order and allowed the period for which they were appointed to have been elapsed by efflux of time, they are not now permitted to turn their back and say that their appointments could not be terminated on the basis of their appointment letters nor they could be treated as temporary employee or on contract basis. The submission made by the learned counsel for the respondents to the said effect has no merit and is, therefore, liable to be rejected. It is also well-settled law by several other decisions of this Court that appointment on ad hoc basis/temporary basis comes to an end by efflux of time and persons holding such post have no right to continue on the post and ask for regularisation etc."

6. Recently, the Division Bench of this Court in the judgement dated 25.08.2022 passed in Letters Patent Appeal No.1092 of 2021 has held thus:

"4 The decisions of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and others v. Umadevi and another and in the case of State of Karnataka and others v. M. L. Kesari and others (Supra), would not be applicable to the facts of the present case. Therefore, we are of the opinion that the appellant University had committed no error in terminating the services of the original petitioner in terms of the contract of appointment and, therefore, we also hereby held that the employee who is appointed on a particular post for a fixed

period with fixed salary cannot claim regularization of his services on the ground that he continued on the said post for long duration as after the original petitioner was terminated from service, respondent No.4 who was appointed in his place was also appointed on fixed period of five years with fixed salary and upon completion of five years period, respondent No.4 has been appointed on regular basis. Therefore, it cannot be said that the Government Resolutions dated 15.5.2012 and 28.2.2013 are arbitrary and therefore the same cannot be quashed and set aside by directing University to reinstate the original petitioner and directing the University to take appropriate action for appointing the original petitioner on regular basis, as was done by learned Single Judge, contrary to the ratio laid down by the Hon'ble Supreme Court in the aforesaid decisions."

Thus, the judgement of the Apex Court in the case of Y.D.Deshpande (supra) and the Division Bench affirm that a contractual employee has no right to the post and cannot claim regularization only because he / she has served for long period. It is in absolute domain of the authority to give benefit of regularization, and this Court cannot issue any directions directing regularization of service of a contractual appointee. The petitioner has no right to the post, on which he has been appointed on contractual basis. As far as the transfer order is concerned, the same cannot be interfered with as the respondent authorities can transfer the contractual employee as per the work requirement.

7. The order, on which reliance is placed by the learned advocate Mr.Dave cannot come to the rescue of the petitioner since he is not appointed on probation and on the contrary, she has been appointed on contractual basis for a period of eleven months. It is in absolute desertion of the respondent-Corporation to pass appropriate order of appointing the petitioner on probation or on contractual basis. No provision of law or any regulation or standing order is shown to this Court, which would entitle the petitioner for regularization, after completion of number of years of service on contractual basis.

8. Accordingly, the writ petition fails and is rejected. There shall be no order as to costs.